

SENATE BILL REPORT

ESSB 5748

As Amended by House, April 7, 2011

Title: An act relating to cottage food operations.

Brief Description: Regarding cottage food operations.

Sponsors: Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Rockefeller, Honeyford and Chase).

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 2/14/11 [DPS].

Passed Senate: 3/04/11, 47-2.

Passed House: 4/07/11, 92-0.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5748 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Delvin, Ranking Minority Member; Becker, Haugen, Honeyford and Schoesler.

Staff: Bob Lee (786-7404)

Background: In 2010 Michigan enacted a law allowing residents to make certain food products at home and to sell them. Previously, residents were required to make their foods in a commercial kitchen certified by the Michigan Department of Agriculture and to pay license fees. The Michigan law covers businesses that gross less than \$15,000 annually. The foods that can be sold must be classified as non-potentially hazardous foods and the legislation contains a list of items that qualify and that do not qualify.

Washington State has similar requirements to those that existed in Michigan prior to the passage of the 2010 Michigan legislation. There is interest in Washington State to allow a similar program to allow cottage food operations to sell breads, baked goods, and other food directly to the ultimate consumer.

Summary of Engrossed Substitute Bill: A new category of food processing license is created for cottage food operations that have gross sales of under \$10,000 per year. The

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license fee for this new category is set at \$30 per year, as compared to a minimum of \$55 per year under current law. License fees are paid to the Department of Agriculture (Department).

Cottage food products include non-potentially hazardous baked goods, jams, jellies, preserves, and fruit butters, and other non-hazardous foods as identified in rule by the Department. Cottage food operations are persons who produce cottage food products in the home kitchen of their primary domestic residence only for sale directly to the consumer. Domestic residence does not include a group or communal residential setting or an outbuilding, shed, barn, or similar structure. A home kitchen is one that is primarily used for the residents of a home and may contain one stove or oven, which may be a double oven designed for residential use.

Licensed cottage food operations are exempt from prohibitions against the use of a home kitchen under provisions of rules adopted by the Department or the Washington State food service code. Cottage food operations licensed by the Department are not subject to permitting and inspection by local health jurisdictions except in response to a food-borne outbreak or other public health emergency.

Cottage food operations must package and properly label for sale to the consumer. The label must include at least the following information:

- the name and address of the business;
- the name of the cottage food product;
- the ingredients in descending order of predominance by weight;
- the net weight or net volume;
- allergen labeling as specified by federal labeling requirements;
- if any nutritional claim is made, appropriate labeling as specified by federal labeling requirements; and
- the statement that the product was "made in a home kitchen."

Cottage food products may not be sold by Internet or mail order or for resale outside of the state.

Authority is provided to the Department to apply to the court for an administrative inspection warrant. Such warrant may be issued where the Department has attempted inspection but access was actually or constructively denied, or where there is reasonable cause to believe that a violation is occurring or has occurred.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: None.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony as Heard in Committee: PRO: When doorbelling, people often offer food and I always accept it and haven't gotten sick. In terms of what is

regulated, there needs to be a rule of reason as to how far the regulations go. Food is sold at fairs, and farmers markets, and made in home kitchens. Right now, it is illegal to bake or decorate cakes at home and sell them. Seventeen states allow certain foods made in a home kitchen to be sold. Most of those states do not have a dollar limit on annual sales. What I have to do now is go to a certified community kitchen at the local grange and find a babysitter for my children to operate my cake decorating business. It is ok if they want to inspect my home.

CON: The bill allows foods that takes a lot of hand contact to be sold, that may spread disease. Many home kitchens have children and pets and there is concern about selling food prepared in home kitchens. The agencies are happy to assist small businesses with complying – as commercial kitchens are available in most communities. The current bill is opposed as written. When people get sick from a food borne illness, it can be devastating to both the consumer and to the producer who sold the food.

OTHER: There are technical issues in the bill. Local public health districts may inspect home kitchens under their authority.

Persons Testifying: PRO: Senator Rockefeller, prime sponsor; Felicia Hill, citizen.

CON: Kirk Robinson, Department of Agriculture; Craig McLaughlin, State Board of Health.

OTHER: Dave Gifford, Washington State Department of Health; Ron Shultz, State Conservation Commission.

House Amendment(s): In place of a \$30 annual license fee, the House striking amendment establishes a \$75 public health review fee, a \$30 processing fee, and a \$125 basic hygiene inspection fee. These fees are collected annually by the Department. An additional fee must be collected for each additional compliance inspection.

Instead of inserting cottage food operations as a new category of license in the food processing act, the House striking amendment establishes a new chapter to regulate these operations.

The maximum annual gross sales allowed for a permitted cottage food is to be set at \$15,000 through December 31, 2012. This amount must be increased each biennium by rule to reflect inflation.

The permitted area of the home is defined to include the portion of a domestic residence that includes the area where cottage food products are prepared, packaged, stored or handled. Inspections may occur only of the permitted area. The operator must sign a document that expressly grants authority to the Department the right to enter the domestic residence during normal business hours or other reasonable times. If access is denied to the permitted area, the Department is authorized to obtain a search warrant for the permitted area from the appropriate court. Denial of access to the Department may be grounds for denial or suspension of a license.

A specific list of grounds for denial or suspension of a license are listed. A new penalty section modeled after the current food processors statute is set forth that includes authority to impose a

civil penalty of up to \$1,000 per violation, and for violations to be punishable as a misdemeanor for a first violation, and a gross misdemeanor for any subsequent violation within a five-year period.

The wording on the label for food sold by a cottage food operation is to include the following statement: "Made in a home kitchen that has not be subject to standard inspection criteria."

Any person who works at a cottage food operation must have secured a food and beverage service worker's permit.

The Department may contract with local health jurisdictions to conduct the required inspections. Except as otherwise provided in this chapter, cottage food operations with a valid permit issued under this act are not required to be licensed under the state Food Processors Act or to be permitted and inspected by a local health jurisdiction. This act does not affect application of any other state or federal law, or any applicable local ordinance.

The list of foods that can be produced by a cottage food operation remains the same as the version passed by the Senate and includes non-potentially hazardous baked goods; jams, jellies, preserves, and fruit butters as defined in 21 C.F.R. Section 150; and other non-potentially hazardous food identified by the Department in rule.

The Department may adopt by rule, requirements for cottage food operations pertaining to:

- permit application and renewal inspections;
- sanitary procedures;
- facility, equipment, and utensils;
- food product labeling in addition to those specifically listed in the legislation;
- clean water sources and waste and wastewater disposal; and
- washing and hygienic practices.

When conducting an annual hygiene inspection, the Department must inspect for the following:

- No unauthorized persons may be engaged in preparation of any cottage food product or be in the home kitchen during the preparation of any cottage food product.
- No cottage food preparation may occur with any other domestic activity such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.
- No infants, small children, or pets are in the home kitchen during the preparation of any cottage food products.
- All food contact surfaces, equipment, and utensils used for the preparation of cottage food products must be washed, rinsed, and sanitized before each use.
- All food preparation and food and equipment storage areas are maintained free of rodents and insects.
- All persons involved in preparation of cottage food products have a food and beverage service worker permit, do not go to work in a home kitchen when sick, wash their hands before preparing any food, and avoid contact of bare hands with ready-to-eat food products by using gloves, bakery papers, tongs, or other utensils.